



SIERRA CLUB

October 27, 2022

Secretary Jennifer Granholm
U.S. Department of Energy
1000 Independence Ave SW
Washington, DC, 20585
The.Secretary@hq.doe.gov

Re: April 8, 2013 Petition for Rulemaking Regarding Natural Gas Export Policy

Dear Secretary Granholm:

In 2013, the undersigned—Sierra Club, Friends of the Earth, Earthworks, Environment America, Delaware Riverkeeper, and the Center for Biological Diversity—petitioned the Department of Energy to promulgate regulations or guidance defining how the Department will determine whether proposed export of liquefied natural gas (LNG) would be consistent with the public interest, as required by section 3 of the Natural Gas Act, 15 U.S.C. 717b(a).¹ It has been nine years, and the Department has not directly responded to this petition. This delay is unreasonable and unexplained.

The Department's actions in the intervening time confirm that such a rulemaking remains sorely needed. Since this petition was filed, the Department has approved over 40 applications for exports

¹ https://www.energy.gov/sites/default/files/2016/02/f30/Ex._02_-_LNG_rulemaking_petition.pdf

to non-free trade agreement countries,² all under an ad-hoc approach that acknowledges the Department's lack of an export-specific analytic framework. And under this ad-hoc approach, both the Department and the Federal Energy Regulatory Commission have ignored, obscured, or otherwise inadequately considered many harmful impacts of LNG exports, including their regressive economic impact, their impact on environmental justice communities, and their incompatibility with U.S. climate commitments.

We contend that if the Department had reviewed export applications under a framework that required consideration of these issues, it would have recognized that LNG exports are contrary to the public interest. But regardless of whether the Department agrees that a different analytic framework would have led to different outcomes, we hope that the Department will agree that, in light of the growing volume of LNG exports and export applications, the Department and public would benefit from a deliberate, considered framework. Given the rapidly growing volume of applications and the urgency of the climate crisis, we call on the Department to act quickly to respond to our petition.

We write to remind the Department of this long-outstanding petition for rulemaking. As we previously explained, the first step the Department should take is to solicit public comment on the Department's handling of export applications and proposals for a framework for evaluating exports. And while we stand by the 2013 petition as-filed, in the following, we summarize some of the subsequent developments that further support the need for an export-specific rulemaking or guidance.

I. The Department of Energy Has Approved Over 40 Non-Free Trade Agreement Export Applications Without Having a Framework For Evaluating Them

The Natural Gas Act requires the Department of Energy to prohibit exports to non-free trade agreement countries where such exports would be inconsistent with the public interest. 15 U.S.C. § 717b(a). The statute does not explicitly define the public interest, leaving authority for the Department to interpret this term. For imports, the Department published guidelines for making public interest determinations, identifying factors to be considered and the reason for selection of those factors.³ That guidance was developed in a general proceeding, after consultation with

² https://www.energy.gov/sites/default/files/2022-09/Summary%20of%20LNG%20Export%20Applications%20%289-23-22%29_0.pdf

³ U.S. Dep't of Energy, New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 Fed. Reg. 6684 (Feb. 22, 1984), available at https://archives.federalregister.gov/issue_slice/1984/2/22/6668-6689.pdf#page=15.

numerous stakeholders, and with multiple opportunities for public input.⁴ But the Department has never undertaken a similar process for exports. While the 1984 guidelines are now stale and warrant revision even for imports, these old import guidelines are still far more consideration than the Department has ever given to exports.

For a generation, the Department's failure to give analogous consideration to how the "public interest" should be determined in the export context was not a major problem, because of the small scale of U.S. gas exports. But that abruptly changed a decade ago. The Department received its first application for LNG exports from the lower 48 states in 2010. When Sierra Club *et al.* petitioned the Department for a rulemaking in 2013, the Department had received applications for 28.3 billion cubic feet per day of export capacity, equivalent to half the gas produced in the United States in 2012.⁵ Now, the volume of proposed exports has more than doubled.⁶ The Department has approved more than 40 non-free trade agreement export applications.⁷ Fifteen more applications are pending under Department review.⁸

But the Department *still* hasn't adopted guidelines or a regulatory framework for review of these applications, nor has the Department responded to the undersigned's petition requesting such guidance. Instead, in every export order the Department has issued since the undersigned's petition for rulemaking, the Department has continued to articulate the ad-hoc analyses cobbled together from questionable sources.⁹ First, the Department generally invokes its *import* guidelines, recasting them as the generic "1984 Policy Guidelines."¹⁰ By their very title, these guidelines refer specifically to imports, and not one sentence of the 1984 guidelines' discussion relates to U.S. exports. The

⁴ *Id.* at 6686-87.

⁵ 2013 Petition at 4.

⁶ https://www.energy.gov/sites/default/files/2022-09/Summary%20of%20LNG%20Export%20Applications%20%289-23-22%29_0.pdf.

⁷ *Id.*

⁸ *Id.*

⁹ Compare, e.g., *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961, at 27-29, Dkt. No. 10-111-LNG (May 10, 2011), available at https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/2011/orders/ord2961.pdf, with *Magnolia LNG LLC*, DOE/FE Order No. 3909-C, Order Amending Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, at 24-26, Dkt. No. 13-132-LNG (April 27, 2022), available at <https://www.energy.gov/sites/default/files/2022-04/ord3909c.pdf>.

¹⁰ Order 3909-C at 25.

Department has never explained why these guidelines may appropriately be applied to exports;¹¹ and, in fact, given the stark differences between exporting and importing, they cannot be.

Second, the Department consistently invokes expired Delegation Order No. 0204-111,¹² promulgated alongside the 1984 import guidelines. But this order merely stated that the Department would regulate exports “based on a consideration of the domestic need for the gas to be exported and such other matters as the [Department] finds in the circumstances of a particular case to be appropriate.”¹³ It provides no guidelines whatsoever for the Department to use in determining whether to issue export authorizations.

Third, the Department’s ad-hoc, project-specific export adjudications state that the Department has settled on “a range of factors” to consider, typically formulated as including “(i) the domestic need for the natural gas proposed to be exported, (ii) whether the proposed exports pose a threat to the security of domestic natural gas supplies, (iii) whether the arrangement is consistent with DOE’s policy of promoting market competition, and (iv) any other factors bearing on the public interest.”¹⁴ In actual practice, this final catch-all bears a heavy load, because the Department consistently considers impacts including balance of trade, purported job creation, global strategic concerns (including diversifying other nations’ energy supplies), impacts on greenhouse gas emissions, and other issues not enumerated in the Department’s purported list of factors. And the Department has provided no discussion whatsoever of how it will balance these factors. As we explained in 2013, a mere “checklist” of factors to consider, without discussion of their relative importance or how to resolve conflicts between them, fails to meaningfully interpret the “public interest” or to inform decisionmakers, applicants, or the public.¹⁵

In summary, since we submitted our petition for rulemaking in 2013, the Department still has not adopted any guidance on evaluating export applications. While the Department’s orders have largely coalesced around consistent language to use in discussing the public interest standard, this language is unsupported, provides an incomplete framework, and fails to even describe what the Department actually does in practice.

¹¹ The Department typically cites two prior project-specific export authorizations, *see id.*, both of which invoked the import guidelines without discussion or analysis. <https://www.ferc.gov/sites/default/files/2020-08/doe1473.pdf>, <https://www.ferc.gov/sites/default/files/2020-08/doe-order350.pdf>.

¹² Order 3909-C at 25.

¹³ 66 Fed. Reg. at 6690; *see also* <https://www.directives.doe.gov/delegations-documents/204.111.pdf>.

¹⁴ Order 3909-C at 25-26.

¹⁵ 2013 Petition at 13-14.

II. The 1984 Import Guidance, and Its Deference to Markets, Is Still An Inappropriate Tool for Evaluating Exports

As we explained in our 2013 petition, regardless of whatever merit the 1984 import guidance's *laissez faire*, market-driven approach may have for imports, it is a poor fit for exports.¹⁶ The fact that American consumers are willing to outbid other markets for proposed imports may be some evidence that those imports will benefit the American public, but the fact that a foreign buyer is willing to outbid American consumers for U.S. gas does not demonstrate that exporting that gas will help the American public.¹⁷ Thus, while the 1984 import guidance explained *why*, at the time, the Department believed that markets would in general appropriately identify whether proposed imports were in the public interest, the Department has never provided a comparable discussion of why markets should be trusted in the export context. Instead, in the export context, the Department merely offers deference to markets as an article of faith.

Since 2013, LNG exports have significantly contributed to an increase in domestic energy prices, domestic energy markets have not consistently responded as the Department expected them to, and American consumers—particularly low-income households—are facing increasing energy burdens. The Department needs to develop public-interest guidance specific to exports, and as part of that process, the Department needs to hear from affected communities.

III. Further Guidance or Regulation Is Needed to Ensure that the Department Considers Equity, Environmental Justice, and Climate Change

Finally, as our 2013 petition explained, there are a number of factors that are pertinent to the public interest but that have received no weight in the Department's export analyses. An export-specific guidance or regulation is necessary to ensure that these factors are discussed, and that the Department has a clear framework for weighing these factors against competing concerns.

First among these omitted factors is equity, or distributional impacts.¹⁸ As the Departments' own economic analyses have stated, the domestic impact of increased exports is not uniformly felt; there are winners and losers. Every energy consumer—*i.e.*, every American—pays higher energy prices as a result of exports. And the harms disproportionately fall on those who are already disadvantaged: Black, Hispanic, and Native American households all face dramatically higher energy burdens—spending a greater portion of their income on energy bills—than the average household.¹⁹ On the

¹⁶ 2013 Petition at 5-12.

¹⁷ *Id.* at 9.

¹⁸ 2013 Petition at 8-10.

¹⁹ American Council for an Energy-Efficient Economy, How High are Household Energy Burdens? (Sept. 2020), available at <https://www.aceee.org/sites/default/files/pdfs/u2006.pdf>. *Accord* Eva

other hand, the benefits are largely confined to those who own shares in or are employed by fossil fuel companies. Since the 2013 petition was submitted, the Department has recognized that “the distributional consequences of an authorizing decision” may be so unfair that exports are contrary to the public interest even if they would “net positive benefits to the U.S. economy as a whole.”²⁰ But the Department has never considered this issue as part of its export analysis. Instead, the Department has merely stated that export opponents have failed to demonstrate that distributional impacts render a project contrary to the public interest.²¹ But the Department has not provided any guidance on what such a demonstration would entail. *Every* export project will have adverse distributional impacts; the Department must adopt a framework that acknowledges these impacts, and that also gives *weight* to these impacts in the overall public interest determination.

Second, the Department’s current practice does not account for the environmental impact of export infrastructure.²² Although the Federal Energy Regulatory Commission (FERC) routinely understates the impacts of export infrastructure, even FERC agrees that export terminals emit high volumes of air pollution that can result in concentrations exceeding EPA thresholds, that export vessel traffic interferes with commercial and recreational use of waterways, and that export infrastructure has other wide-ranging impacts on surrounding communities. These impacts obviously weigh against the public interest. And these impacts typically fall on environmental justice communities. Presently, the Department excludes the environmental impacts of export infrastructure from its public interest analysis. But then FERC (incorrectly) concludes that because the Department has found that exports are in the public interest, the benefits of exports necessarily outweigh the impact on surrounding communities, even though no agency has ever measured the local harm against the purported broader benefit. Impacted communities deserve a transparent framework that ensures that they are heard, rather than lost in an interagency shuffle.

Third and finally, the Department gives short shrift to climate, and its approach is fundamentally at odds with the need to dramatically curb the use of fossil fuels to stave off a climate crisis. As we have explained elsewhere, the Department understates emissions and the extent to which LNG exports will increase net global fossil fuel use. But aside from those technical errors, the Department ignores the impact of LNG exports on the Biden administration’s broader climate strategy, at home

Lyubich, The Race Gap in Residential Energy Expenditures (June 2020), available at <https://haas.berkeley.edu/wp-content/uploads/WP306.pdf>.

²⁰ DOE/FE Order 3638-A (Corpus Christi) at 45 (May 26, 2016), available at https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/2012/applications/12-97-LNG_CMI_Corpus_Rehearing_May_26.pdf.

²¹ *See, e.g.*, Order 3909-C at 49 (citing *Sierra Club v. U.S. Dep’t of Energy*, 703 F. App’x 1, 3 (D.C. Cir. 2017)).

²² 2013 Petition at 10.

and abroad, which the Administration has adopted in recognition that a failure to drastically reduce greenhouse gas emissions will lead to a climate catastrophe. President Biden rejoined the Paris Agreement on Day 1 of the Administration, committing to reduce territorial emissions as well as to work collectively to limit global temperature rise. The Administration has since put forward its 2030 nationally determined contribution,²³ played a leadership role in launching the global methane pledge, and pushed for increased climate ambition from other countries. Investing billions of dollars to ensure the continued use of fossil fuels for decades to come is categorically at odds with these goals. Expanding domestic fossil fuel production to supply LNG exports directly impedes the U.S.'s ability to meet its own commitments, jeopardizes the commitments of countries where the gas is exported, and undermines U.S. ability to argue that other nations must wind down fossil fuel production as quickly as possible. The Department must consider how approving more LNG projects thwart investment in real, long-term zero-emission solutions.

IV. Conclusion

To date, the Department has acted as a rubber stamp for LNG export approvals. The Department has not denied a single application. But equally concerning, the Department hasn't even suggested what set of facts *would* lead to a denial. The undersigned remain firmly opposed to LNG exports, which are bad for the climate, for frontline communities, and for the pocketbooks of most Americans. The Department owes it to the American public to adopt a decisionmaking framework that takes these impacts into account. A regulation or guidance document interpreting the Natural Gas Act's public interest standard was needed a decade ago, and it is still needed now.

Sincerely,



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²³ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>

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